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Applicant:	Rodney G. Johnson	Examiner:	Mark Beauchaine
Serial No.	10/663,436	Group Art Unit:	3853
Filed:	September 15, 2003	Docket No.	PA0891.ap.US
Title:	SHUFFLING APPARATUS AND METHOD		

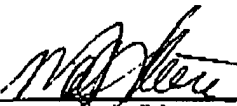
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MAIL STOP APPEAL BRIEF - PATENTS


Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The following documents are hereby submitted:

- ☒ Third Replacement Brief On Appeal (23 pages)
- ☒ Transmittal Sheet
- ☒ Facsimile Cover Sheet

The fee for the Appeal Brief was paid for when the original Appeal Brief, dated 25 June 2007, was submitted to the USPTO. Please consider this a **PETITION FOR EXTENSION OF TIME** for sufficient number of months to enter these papers if an additional extension of time is deemed necessary by the Office. Authorization is hereby given to charge Deposit Account Number 50-1391 if such additional extension is necessary.

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By: 
Atty: Mark A. Litman
Reg. No. 26,390

The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being SENT BY facsimile to the United States Patent and Trademark Office, addressed to: Mail Stop: **APPEAL BRIEF - PATENTS**, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on **8 February 2008**

Mark A. Litman
Name


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S/N 10/663,436**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Rodney G. Johnson	Examiner:	Mark Beauchaine
Serial No.	10/663,436	Group Art Unit:	3653
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MAIL STOP: APPEAL BRIEF - PATENTS

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Commissioner for Patents

Alexandria, VA22313-1450

THIRD REPLACEMENT BRIEF ON APPEAL

Sir: The present Brief on Appeal is being submitted as a Replacement Brief on Appeal in response to the Notice of Non-Compliant Brief on Appeal mailed 14 January 2008. The NEW reasons given are indicated by the checking of Boxes No. 4 and 10 on the Form PTOL 462 (Rev. 7-05), with some additional explanations. The U.S. Patent and Trademark Office is hereby authorized to debit any costs and fees associated with this Petition to Deposit Account No. 50-1391. Appellant is submitting this single copy of the Appeal Brief in Compliance with the requirements of 37 CFR 41.37(c). Appellant requests a personal appearance at the Board of Appeals, but will defer payment of the fee until after receipt of the Examiner's Amendment.

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being sent by facsimile transmission to the United States Patent Office addressed to: MAIL STOP: APPEAL BRIEF - PATENTS, P.O. BOX 1450, Commissioner for Patents, Alexandria, VA 22313-1450 8 FEBRUARY 2008.

Mark A. Litman
Name

Signature

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REAL PARTY IN INTEREST

The real party in interest in this Appeal is the assignee of the full right, title and interest in this Application, Shuffle Master, Inc., having a place of business at 1106 Palms Airport Drive, Las Vegas, Nevada 89119-3730.

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RELATED APPEALS AND INTERFERENCES

The Appellant(s), the legal representative prosecuting this application and Appeal, and the assignee are not aware of any Appeals or Interferences that will directly affect or have a bearing on the Board's of Patent Appeals and Interferences decision in this pending Appeal.

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STATUS OF CLAIMS

1. Claims 1-19, 22-24 and 32-33 have been cancelled.
2. Claim 35 has been objected to as lacking a period [.]
3. Claims 20, 21, 25-31 and 34-36 have been rejected under 35 USC 103(a) as obvious over the combination of U.S. Patent No. 5,989,122 (Roblejo) in view of U.S. Patent No. 6,149,154 (Grauzer) in view of U.S. Patent No. 4,339,134 (Macheel).

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STATUS OF AMENDMENTS

A response and Request for Reconsideration was filed after the Final Rejection. Even though no amendments were made to the claims, the non-existent amendments were refused as "They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal;"

All other Amendments made during the prosecution of the Application have been entered without objection.

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SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 20 describes a card shuffler [10] having a card holding area [12] and a card collecting area [20]. The card shuffler [10] is capable of moving cards between the card holding area [12] and the card collecting area [20, carousel] to randomize cards. The card collecting area is the claim is the carousel. The shuffled set doesn't form until discharged into the single output tray. There is a sensor [15] between the card holding area [12] and the card collecting area [20]. (page 2, lines 15-25) The sensor [15] reads suit and rank of each card individually between the card holding area [12] and the card collecting area [20]. A display [28] on the card shuffler displays suit and rank of a card read by the sensor. (Page 3, line 24 through Page 5, line 5; Page 7, lines 20-24)

Claim 20 - A card shuffler [10] having a card holding area [12] and a card collecting area [20],

the card shuffler [10] being capable of moving cards between the card holding area [12] and the card collecting area [20] to form a shuffled set of cards [not shown] in the card collecting area [20],

a sensor [15] between the card holding area [12] and the card collecting area [20],

the sensor [15] reading suit and rank of each card individually between the card holding area [12] and the card collecting area [20], wherein a display [28] on the card shuffler [10] displays suit and rank of a card read by the sensor [15].

Independent claim 25 describes an automatic card shuffler, comprising: a card holding area; a card randomization area; a card transfer mechanism that moves cards from the card holding area to the card randomization area; (Page 5, line 6 through Page 8, line 15) a card reading mechanism located between the card holding area and the card randomization area that is capable of reading rank and suit; [Page 5, lines 16-22] and a

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display device on the card shuffler capable of displaying rank and suit of cards [page 7, lines 4-8 and 18-24].

25. An automatic card shuffler [10], comprising:

a card holding area [12];

a card randomization area [20];

a card transfer mechanism [35] that moves cards from the card holding area [12] to the card randomization area [20];

a card reading mechanism [15] located between the card holding area [12] and the card randomization area [20] that is capable of reading rank and suit; and

a display device [28] on the card shuffler [10] capable of displaying rank and suit of cards.

Independent claim 28 describes an automatic card shuffler [10] having a) a card infeed area [12]; b) a card shuffling mechanism [20]; c) a shuffled card discharge area [26]; d) a microprocessor [16] programmed to control operation of the card shuffler [10] [Page 5, line 6 through Page 8, line 15]; e) a first card feeder [14, page 5, lines 16-17] that transfers cards from the card in-feed area to the card shuffling apparatus; f) a second card feeder that transfers cards from the card shuffling mechanism to the shuffled card discharge area; (Page 5, line 6 through Page 8, line 15) g) a sensor [15] capable of reading rank and suit located within the card shuffler [10]; and h) a display [28] unit on the automatic card shuffler [10] that displays rank and suit of cards. (Page 3, line 24 through Page 5, line 5; Page 7, lines 20-24)

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28. An automatic card shuffler [10], comprising:

- a card infeed area; [12]
- a card shuffling mechanism; [20]
- a shuffled card discharge area; [26]
- a microprocessor [16] programmed to control operation of the card shuffler [10];
- a first card feeder [14, page 5, lines 16-17] that transfers cards from the card infeed area [12] to the card shuffling apparatus [20];
- a second card feeder [31] that transfers cards from the card shuffling mechanism [20] to the shuffled card discharge area; [26]
- a sensor [15] capable of reading rank and suit located within the card shuffler [10]; and
- a display unit [28] on the automatic card shuffler [10] that displays rank and suit of cards.

ALL REFERENCES NUMBERS ARE TO FIGURE 2.

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GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Solely for the purposes of expediting this Appeal and complying with the requirements of 37 C.F.R. 1.192(c)(7), the following grouping of claims is presented. This grouping is not intended to constitute any admission on the record that claims within groups may or may not be independently asserted in subsequent litigation or that for any judicial determination other than this Appeal, the claims may or may not stand by themselves against any challenge to their validity or enforceability.

Claims 20, 21, 25-31 and 34 have been rejected under 35 USC 103(a) as obvious over the combination of U.S. Patent No. 5,989,122 (Roblejo) in view of U.S. Patent No. 6,149,154 (Grauzer) in view of U.S. Patent No. 4,339,134 (Macheel).

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ARGUMENT

1. Claims 34 was objected to as lacking a period [.]

This objection will be addressed in this dependent claim upon resolution of the substantive rejections in this Appeal.

2. Claims 20, 21, 25-31 and 34-36 have been rejected under 35 USC 103(a) as obvious over the combination of U.S. Patent No. 5,989,122 (Roblejo) in view of U.S. Patent No. 6,149,154 (Grauzer) in view of U.S. Patent No. 4,339,134 (Macheel).

The rejection asserts that Roblejo shows all of the structural elements of the claims except for:

- a) the specific location of the card sensor between the card holding (input) area and the card collecting area (the delivery tray);
- b) the signaling of a surplus or missing card;
- c) the visual signaling means displaying the suit and rank of a card read by the sensor/card reader;
- d) a display to indicate the presence of an incorrect set of cards in the shuffler, *i.e.*, the detection of a missing or over-supplied card (citing column 4, lines 8-14; and column 27-33 [*sic*, column 4, lines 26-37]).

Roblejo is therefore admitted in this rejection as lacking teachings of at least:

- 1) sensor/reading mechanism between said card holding and card collecting areas; and
- 2) a display that displays the suit and rank of a card read by said sensing/reading mechanism.

The rejection thereafter asserts that:

- a) Grauzer shows the specific location of the card sensor between the card holding (input) area and the card collecting area (the delivery tray) and it is therefore

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asserted that it would be obvious to incorporate that structural feature into the design of the Roblejo shuffler;

- b) "the signaling of a surplus or missing card is inherent in said signaling operation" of Roblejo where there is a visual means of signaling a network administrator that a deck of cards is either incomplete or inaccurate (Column 4, lines 8-14); and
- c) Macheel teaches a card randomizing apparatus with a display that can identify a particular card by rank and suit, so that it would have been obvious to one of ordinary skill in the art to incorporate the display of Macheel into the shuffler of Roblejo for the purpose of identifying a particular card by suit and rank.

This rejection is respectfully traversed.

The specific disclosures that the rejection relies upon from Roblejo to assert the obviousness of element b) is faulty, both in content and in legal basis. The specific language in the cited text at Column 4, lines 8-14 is:

"The apparatus and process of the invention verifies that the set of one or more decks which is processed is complete and accurate; otherwise, when an incorrect set is determined, the apparatus sends a signal, either audible, visual, to a network administrator, by ejecting a card which does not belong in the set, or by any other means to indicate an inaccurate deck."

and apparently the text at column 4, lines 26-37:

"In some embodiments, it is desirable to connect the apparatus through the microprocessor to a network controller and to send and receive information to and from the network controller regarding locked status and number of cards or sets of cards determined to be complete or incomplete sets. The apparatus may also include means to determine the physical integrity of cards, the physical integrity comprising one or more factors selected from bent, torn, nicked, and marked, and optionally including means to physically eject any card determined to lack the physical integrity. The apparatus may also be adapted to print or direct a printer to print verification dated." (**emphasis added**)

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This broadest reading of the first disclosure shows that "...the apparatus sends a signal...by any...means to indicate an inaccurate deck." There is nothing in that disclosure to indicate that a specific card, by rank and suit, is displayed on an imaging display on the shuffler is the nature of the defect in the deck. Even though "a signal" is a broad term, that fact does not mean that there is a teaching that a specific signal such as the image or name of a specific card by suit and rank is displayed on the shuffler as that signal. That is not an "inherent teaching," but rather an impermissible extension of the teaching by hindsight, without guidance from the teachings of a reference of record in the rejection. Even if a secondary reference is found that shows display of a card image by rank and suit, that does not mean that it would have been obvious to those skilled in the art at the time the present invention was made to incorporate this teaching into Roblejo to display suit and rank of a card as an identification of the nature of a defect in a deck. That fundamental teaching is absent from the references of record and the rejections must fail because of the absence of that teaching.

The ability to identify specific missing or excess cards by suit and rank is an important security feature not available from the teachings of the prior art. By identifying specific missing or extra cards, security may be better able to detect sources of fraud by players or a dealer by locating a specific missing card in control of a person (i.e., in that person's physical possession), or tracking past hands with an excess card in the set to determine where the presence of that specific card recently enhanced the value of a hand (e.g., the last round of play), again providing an likely indication of a source for an excess card. Displaying the information on the shuffler device to the dealer also provides a more secure and private display to only the casino as opposed to the ejection of a card as shown by Roblejo in full view of all players. Card ejection would provide a clear warning to a player that surreptitious action has been indicated, and allow a cheating player additional time to leave the area before that player could be identified and before security personnel could arrive. This deficient or excess card identification on the

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shuffler provides enhanced security to the casino over the performance of the combination of references used in this rejection.

The broadest reading of the second disclosure in Roblejo is immaterial to any visual display identifying rank and suit of cards, except again emphasizing the actual physical ejection of the identified defective card. This second citation does not in any way support the rejection under 35 USC 103(a), and, in fact, emphasizes its defects.

There is absolutely no indication that any "signal" shown by Roblejo would be displayed on a screen. There is no disclosure that the "signal" by Roblejo is other than a physical ejection of an extra card. This failure is especially evident with respect to the limitation in claims 20, 35 and 36 that the card displayed is an identity of a card *absent* from the deck. An absent card cannot be ejected. Detecting missing cards would require a system in which a databank provides a list of cards present in a deck, a program where the scanned images are collectively compared to that databank, an absent card is identified, and an image/alphanumeric from the databank of the absent card is then sent to the display. This would therefore encompass an image that has not been scanned by the reader to be displayed. That concept is completely absent from the teachings of the Roblejo reference. It is impossible to eject a missing card, and Roblejo provides no solution to the problem. Additionally, the problem was not recognized by the art of record and therefore it was not obvious from these references to seek a solution to the problem.

Roblejo teaches only ejecting excess cards. As cards are automatically ejected, and there is no disclosure to the contrary, display of the suit and rank of the ejected cards is not taught, even if the suit and rank were known. All that is taught is a visible signal of a deck defect (e.g., a red light or the like). Johnson (the present inventor) displays the specific identity of the card that is to be removed or that is absent. This enables manual removal of the erroneous card or replacement of the missing card, a solution not available to Roblejo. As Roblejo provides a completely different solution to deck defect problems,

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and the present claims define a solution that provides a more definitive solution to multiple problems, the claimed invention is not obvious from the teachings of Roblejo, even as modified by the addition of two additional references, Grauzer at al. and Macheel.

There also is some significant question as to the enablement of Roblejo, even with regard to the 'specific' signaling functions provided, such as the ejection of the card that does not belong in the set. A review of the drawings shows that Roblejo has fewer slots in the carousel than cards in the deck. More than one card must therefore be inserted into the compartments. There is no explanation as to how a single card can be transported and ejected by the carousel to the ejection zone. It must be remembered that the likelihood of the discovery of an extra card would be found towards the ends of the deck analysis (i.e., the first card cannot be identified as an extra card), so slots in the carousel are likely to be filled or contain other cards during discovery of an extra card. When there are multiple decks present, within the teachings of Roblejo, a very significant portion of the entire collection of cards is likely to have to be read before such a determination is made, as there are already multiple cards of the same suit and rank in the multiple decks. This emphasizes the inference that much of the teaching of Roblejo is prophetic and enablement and extension of the teachings is more like a wish piled upon a wish as opposed to following the trail of a detailed technical disclosure. Asserting "inherency" from such a problematic teaching is an insufficient basis for asserting obviousness under 35 USC 103(a) and fails in the present instance. There is a much higher legal sufficiency requirement for inherency than is available from this teaching. **As there is a substantive basis for finding that Roblejo fails to enable even the objectives of its own intended practice, it is unwise, if not improper to use Roblejo as a starting point for establishing obviousness against technology that is an improvement over the Roblejo disclosure. This lack of enabling disclosure is aggravated by the fact that**

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there is no disclosure or enablement for a visual display of the suit and rank of cards read in the shuffler in Roblejo.

“In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make an use the apparatus or method.” *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 13 USPQ2d 1301 (Fed. Cir. 1989)

“In order for a disclosure to be inherent, however, the missing descriptive matter must necessarily be present in the parent application’s specification such that one skilled in the art would recognize such a disclosure. *See Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268 20 U.S.P.Q.2d (BNA) 1746, 1749.”

“Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems well settled that the disclosure would be regarded as sufficient.” *In re Oelrich*, 666 F.2d 578, 581, 212 U.S. P.Q. (BNA) 323, 326 (C.C.P.A., 1981).

The teachings of Roblejo fail to meet these Patent Law standards for inherency, and the use of such an assertion is both factual and legal error.

Grauzer does not have any impact upon the failure of Roblejo discussed above. Although Grauzer does show a different location for the card reader than that shown by Roblejo, **there is no disclosure of the visual display of the suit and/or rank of particular cards having deficiencies or excesses in a read deck.** These are limitations recited in the claims, and so Grauzer does not overcome the deficiencies of visual information of card suit and/or rank on a display as recited in the claims and as absent from Roblejo.

The addition of Macheel to the combination of Roblejo and Grauzer also fails to correct the deficiencies discussed above with respect to Roblejo in view of Grauzer. Macheel shows an entirely electronic blackjack system in which card values are

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displayed. Macheel does not use physical cards, does not read physical cards, and cannot have either excess cards or a deficiency of cards as all cards are virtual and provided by unalterable software.

The present invention never asserted invention solely for the ability to display a card image. One limitation recited in the claims as an element of the invention is the detection of a specific card identification flaw in a set of cards (e.g., a card missing from the set or an extra card in the set) and the display of that exact card identification flaw, especially on a display on the shuffler. That is one additional limitation in the claims that is absent from the combined teachings of Roblejo in view of Grauzer and Macheel. Macheel is the only reference (asides from the asserted inherency of Roblejo which has been shown to be in error) that is cited to show display of a specific card identification on a display.

Macheel cannot have a card identification flaw except by improper software in the device (there are no physical cards). It is impossible for Macheel to be the basis for a teaching that would overcome the deficiencies of the Roblejo in view of Grauzer combination. The rejection is in error and must be withdrawn.

As already noted above, none of the references can show the limitations of claims 35 and 36 with regard to showing the identification of card not present in the set of cards. Claims 20 (which claim also contains this limitation), 35 and 36 are therefore patentable on the basis of this additional argument. There is no basis of record or suggestion for use of a display showing a specific card that is absent from a set of cards inserted into the shuffling machine.

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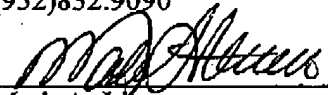
CONCLUSION

All rejections of record have been shown in detail to be in error. The rejection should be reversed and all claims should be indicated as allowable.

Applicants believe the claims are in condition for allowance and request reconsideration of the application and allowance of the claims. The Examiner is invited to telephone the below-signed attorney at 952-832-9090 to discuss any questions that may remain with respect to the present application.

Respectfully submitted,
RODNEY JOHNSON
By his Representatives,
MARK A. LITMAN & ASSOCIATES, P.A.
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Date 8 February 2008 By


Mark A. Litman
Reg. No. 26,390

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Name: Mark A. Litman


Signature

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CLAIMS APPENDIX

1 -19. (CANCELLED)

20. (PREVIOUSLY PRESENTED) A card shuffler having a card holding area and a card collecting area,

the card shuffler being capable of moving cards between the card holding area and the card collecting area to form a shuffled set of cards in the card collecting area,

a sensor between the card holding area and the card collecting area,

the sensor reading suit and rank of each card individually between the card holding area and the card collecting area, wherein a display on the card shuffler displays suit and rank of a card read by the sensor.

21. (PREVIOUSLY PRESENTED) The card shuffler of claim 20 wherein the suit and rank of a card displayed is the suit and rank of a missing or oversupplied card.

22 -24 (CANCELLED)

25. (PREVIOUSLY PRESENTED) An automatic card shuffler, comprising:

a card holding area;

a card randomization area;

a card transfer mechanism that moves cards from the card holding area to the card randomization area;

a card reading mechanism located between the card holding area and the card randomization area that is capable of reading rank and suit; and

a display device on the card shuffler capable of displaying rank and suit of cards.

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26. (ORIGINAL) The device of claim 25, where the device capable of displaying rank and suit is selected from the group of an LCD and an LED display.

27. (ORIGINAL) The device of claim 25 wherein the display device is capable of displaying rank and suit read by the card reading mechanism.

28. (PREVIOUSLY PRESENTED) An automatic card shuffler, comprising:

- a card infeed area;

- a card shuffling mechanism;

- a shuffled card discharge area;

- a microprocessor programmed to control operation of the card shuffler;

- a first card feeder that transfers cards from the card in-feed area to the card shuffling apparatus;

- a second card feeder that transfers cards from the card shuffling mechanism to the shuffled card discharge area;

- a sensor capable of reading rank and suit located within the card shuffler; and

- a display unit on the automatic card shuffler that displays rank and suit of cards.

29. (ORIGINAL) The apparatus of claim 28 wherein the sensor is positioned between the card in-feed area and the card shuffling mechanism.

30. (ORIGINAL) The device of claim 28 wherein the display device is capable of displaying rank and suit read by the card reading mechanism.

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31. (PREVIOUSLY PRESENTED) The device of claim 29 wherein the display device is capable of displaying rank and suit read by the card reading mechanism.

32. (CANCELLED)

33. (CANCELLED)

34. (PREVIOUSLY PRESENTED) The card shuffler of claim 20 further comprising a computer that determines whether cards have been removed or added to cards inserted into the card holding area that have been retrieved from the playing table

35. (PREVIOUSLY PRESENTED) The automatic card shuffler of claim 25 wherein the suit and rank of a card displayed is the suit and rank of a missing card.

36. (PREVIOUSLY PRESENTED) The automatic card shuffler of claim 28 wherein the suit and rank of a card displayed is the suit and rank of a missing card.

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EVIDENCE APPENDIX

No secondary or comparative evidence was submitted in the prosecution of this application that must be considered in this Appeal.

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RELATED PROCEEDINGS APPENDIX

Neither Applicant nor his attorneys are aware of any proceedings in a court or quasi-judicial body that would have a direct bearing on the issues in this Appeal.